IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14104 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUBHASH TRADERS CO.

Versus

DIST. COLLECTOR

Appearance:

1. Special Civil Application No. 14104 of 2004

MR BS BRAHMBHATT for Petitioner No. 1

Mr.Raval, Asst.GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 16/02/2005

ORAL JUDGEMENT

Rule. Mr.Raval, Ld.AGP waives service of rule on behalf of respondents. With the consent of learned

advocates for parties matter is taken up for final hearing today.

2. It appears that the petitioner is holding licence under Gujarat Essential Articles (Licensing Controlling & Stock Declaration) Order, 1981. The search had taken place on 6.4.2004 and certain irregularities were found. The show cause notice was issued to the petitioner, the reply was submitted, and ultimately on 5-6/7/04 the Dist.Supply Officer passed order for forfeiture of 50% of the goods seized. The petitioner has approached this court challenging the said order of confiscation passed by the respondent No.2.

3. Heard Mr.Brahmbhatt for the petitioner and Mr.Raval, Ld.AGP for the respondents. Mr.Brahmbhatt, Ld.advocate for the petitioner firstly raised the contention that in view of the Gujarat Essential Articles (Licensing, Control & Stock Declaration)(Amendment) Order, 2004, which has come into force on 4.6.04 all pulses including Tur and Arhar are excluded, the goods seized of the petitioner can not be confiscation. He submitted that though the search had taken place on 6.4.2004, on the date when the order of forfeiture came to be passed, such items, i.e. Tur & Arhar, were excluded and therefore, the goods could not have been confiscated. I would have recorded the reasons for rejecting the said submission made by Mr.Brahmbhatt, but since the matter was required to be considered on the position of law prevailing on 6.4.2004, it can hardly be concluded that the position of law was required to be considered on the date when the order of confiscation came to be passed, and as Mr.Brahmbhatt has not further pressed the said contention, I find to leave the matter at that stage without observing further. Suffice it to say that since on 6.4.04 the search had taken place and the breach was found on 6.4.2004 and on that both the items, i.e. Tur and Arhar were there in the schedule of essential commodities, namely, pulses, merely because on 4.6.04 such items stood excluded by the aforesaid Control Order, it can not be said that the order of confiscation passed by the authority was without any jurisdiction or that there was no breach relating to control order by the petitioner on the date when the search took place.

4. Mr.Brahmbhatt alternatively submitted that even if it is considered that the breach is there as alleged in the order of confiscation, the impugned order passed by the authority for confiscation of 50% of the seized goods is harsh and the irregularity can not be said to be so serious which would warrant forfeiture of 50% of

seized goods. Therefore, he submitted that on the aspect of proportion and quantum of penalty of goods to be forfeited the petitioner would leaves the matter to this court, but, in any case, in his submission, confiscation of 50% of seized goods is unreasonable and could not have been imposed. Mr.Raval, Ld.AGP is unable to show that the alleged irregularities were so serious which would call for 50% forfeiture of seized goods and for the quantum of penalty he has also left the matter to the court.

5. It appears that the alleged irregularity is that there was surplus quantity of 2 Quintals in the stock of Tur, and surplus quantity of 5.23 quintals in the stock of Arhar. Another irregularity was that 60 bags of Tur was received from the Market Committee but the receipt of the agriculturist was not produced. The third irregularity was for non-display of stock to the cardholders. The fourth irregularity was about non maintenance of stock register and non-maintenance of record of the signature of the agriculturist from whom the goods were purchased. The petitioner had submitted explanation to the aforesaid irregularities, but in the order of the Dist.Supply Officer it is mentioned that the explanation is considered, but it has not been discussed at all as to why the explanation submitted by the petitioner is not acceptable or no reasons are mentioned. It is well settled that even if the irregularities are there it is expected for the authority to record the reasons as to why the penalty is required to be imposed and what quantum of the penalty would meet with the facts and circumstances. As no such reasons are recorded, it would be a case for remand of the matter in normal circumstances. However, instead of remanding the matter, it appears that if this court finds that the irregularities are of technical in nature, a lenient view can be taken for the quantum of confiscation of seized goods and the same would on the contrary curtail the time which may be consumed by the authority in rehearing and passing fresh order. It would be profitable to refer to the decision of the Division Bench of this court in the matter of Patel Ambaram Kuberbhai vs State of Gujarat & Ors reported in 1998(2) GLH 533 wherein at paras 10 & 11 it was observed as under:

"10. So far as merits are concerned, primafacie, the learned counsel for the appellant is right that no finding regarding blackmarketing or hoarding has been recorded not such allegation was made. As observed by a learned single judge

in M/s Govind Karsan & Co vs State (1983) 24 (1) GLR 145 if there is no intention of blackmarketing or hoarding on the part of the person committing breach of the provisions of the Order, the court may exercise discretion by reducing the penalty.

11. In the facts and circumstances of the case, therefore, in our opinion, ends of justice would be met if instead of 50% confiscation ordered by the State Govt, 25% of the goods are ordered to be confiscated."

In the present case also, if the matter is examined accordingly there is no allegation of blackmarketing of the essential articles. Further, if the facts and circumstances are considered, it can be said that the alleged breaches, if considered, in view of the explanation submitted by the petitioner, the same would not invite forfeiture of 50% of the goods seized. It is required to be recorded that the area where the petitioner is operating is in the tribal area and therefore the agriculturists of the area may not be so literate and therefore the receipt if not maintained by the petitioner and if the board is not displayed such irregularities can at the most said as technical breaches considering the facts and circumstances. Hence, considering the facts and circumstances of the case, it appears that forfeiture of 25% of the goods seized shall meet with the sufficient quantum of penalty.

6. In view of the aforesaid, the order passed by the Dist.Supply Officer at annexure"A" shall stand quashed and set aside to the extent of imposing penalty of forfeiture exceeding 25% of the goods seized. Consequently, the order shall remain valid to the extent of imposing of penalty for forfeiture of 25% of the goods seized.

7. Petition is partly allowed to the aforesaid extent. Rule is partly made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

16.2.2005 (JAYANT PATEL,J)